Anti-Injunction Bill

BEFORE HON. WM. D. STEPHENS

GOVERNOR OF CALIFORNIA

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ARGUMENT

ON THE

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(S. B. 1035)

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Governor of California

Monday, May 21, 1917

BY

MAX J. KUHL, ESQ.

Attorney for

SAN FRANCISCO CHAMBER OF COMMERCE

The Argument

AT the outset I deem it proper for your information to state that in appearing before you I do so not merely in my personal capacity, but as the authorized representative of a number of important business organizations throughout this State who are vitally interested in opposing your final approval of this bill. I hold written authorizations from the following organizations and others:

San Francisco Chamber of Commerce.
Merchants' & Manufacturers' Association, Los Angeles.
Salinas Chamber of Commerce.
Marysville Chamber of Commerce.
Napa Chamber of Commerce.
Associated Jobbers of Los Angeles.
Chamber of Mines and Oil, Los Angeles.
San Diego Chamber of Commerce.
Watsonville Merchants' Association.
Manufacturers' Association of San Diego.
Pasadena Board of Trade.
Redding Chamber of Commerce.
Los Angeles Chamber of Commerce.
Employers' Association of Alameda and Contra Costa Counties, Oakland.
Merchants', Manufacturers' & Employers' Association, Stockton.
Chamber of Commerce, Fresno.

Your Excellency has heard a great deal of general talk to-day concerning the wrongs suffered by organized labor, the abuses of courts in dealing with strike cases, and the industrial injustice which it is claimed has been for so long inflicted upon the laboring man. You have heard a rather interesting academic discussion concerning the edicts of the Roman tribunes, and how our American courts, without the sanction of authority or precedent have superimposed upon these Roman edicts a power which nowhere else has ever existed. It may be pertinent to suggest to you that at this time we are considering a concrete bit of legislation, namely: Senate Bill 1035, known as the Anti-Injunction bill. It is of far greater importance that we deal with this particular bill, with its peculiar elements of viciousness and unconstitutionality, rather than enter upon a wide discussion of generalities. With your permission, therefore, I shall take the present bill and by an analysis of its provisions attempt to call your attention to its objectionable and unconstitutional features.

The title briefly describes the bill as "An Act to make lawful certain agreements between employees of laborers, to define the cases in which injunctions may and may not issue, to prescribe the procedure in trials for contempt, to secure the right of jury trial in all such cases", etc.

In Section 1, is a general declaration that it shall not be unlawful for working men and women to organize themselves into or carry on labor unions for the purpose of lessening the hours of labor, or increasing the wages, or bettering the conditions

of the members of such organizations; or carrying out their legitimate purposes as freely as they could do if acting singly. With the provisions of this section we have no quarrel.

Our people in accord with labor unions when those organizations are legitimately conducted

IN order to focus your attention upon the objectionable features of the bill, let me say right here that in so far as possible, I shall pass by all the provisions of this statute which in our opinion are neither objectionable nor unconstitutional. Not only have we no quarrel with the provisions of the first section of this act, but I am pleased to advise you that the people whom I represent *are heartily in accord with the principles of labor union organizations when those organizations are legitimately conducted.* We recognize the right of all human beings to organize, and by a lawful exercise of the powers of their organization to better the conditions of their members. We recognize the fact that labor through its organizations has greatly improved the condition of the individual members of labor unions. With their legitimate functions, or the lawful exercise of their great power we have no quarrel. *It is only when organized labor, feeling too keenly its own strength, exerts its power for an illegitimate purpose and brutally brandishes the weapons of violence and coercion over the heads of legitimate business industry and enterprise that we call halt.* In a government like ours, in which all men are presumed to be free and equal and to stand upon a common footing, it is just as

dangerous for organized labor to set up within the government another government composed solely of its own membership as it would be for capital, through the tremendous power of its aggregate wealth, to exploit those whose bread is dependent upon their labor. No free government, whether republican or democratic in form, can long continue to exist, if within its confines is permitted to grow up another extra-official government wielding a power almost as tremendous as that exerted by government itself, and not subject to normal or legal limitations. So I say, with the provisions of Section 1 of this Act we have no quarrel, and I shall, therefore, pass the section without further comment.

Coming now to the second section of the Act, we find this provision:

> "No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property rights must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney."

On its face this language apparently is of no serious moment. It seems merely declaratory of the law as it now exists and has existed in this State for many years. The principle that injunctions shall not issue except to restrain irreparable

injury to property is as old as courts of equity themselves. Indeed the reason for the establishment of the legal principle upon which injunctions are issued arose in the chancery practice of England's equity courts mainly out of the necessity of stopping irreparable injury to property pending the outcome of litigation.

While upon its face this section appears harmless, in another portion of this bill is neatly concealed a declaration of legal principles, which read with Section 2 makes the act not so harmless as its first appearance would indicate. It changes the provision of Section 2 from a mere declaratory rule of law to a legal principle that in my judgment is not only unconstitutional but vicious and dangerous from every viewpoint,—indeed, to the very men who are urging your approval of this bill. I allude to a short sentence that appears as the introductory part of Section 8 of the bill, reading: *"The labor of a human being is not a commodity or article of commerce."* Retain for the moment this sentence in your mind, while I turn back to Section 2 and read again those lines in the section containing the words "unless necessary to prevent irreparable injury to property or to a property right." At a glance you will observe that while the old equity rule is retained in its full force so far as most of the elements of property are concerned, there is at once excluded from its protecting shelter the labor of a human being. In other words, if the labor of a human being is not property, then under no theory of equity practice as it is recognized in our courts or in the courts of England, can a Chancellor issue an injunction to protect a man's very right to work.

Labor is property; the right to labor is a property right

LET me pause here in my analysis of the bill to urge upon you the economic fallacy of the proposition that labor is not property. What, after all, is property, from an economic standpoint? Property is anything which a man owns or controls or of which he may dispose. It consisted originally of lands and cattle. It consists now of buildings, stocks and bonds, personal property of many kinds and all the various things which modern society in its complex development has evolved. Lands and buildings, and cattle, the stocks and bonds of corporations, copyrights and patents, are usually the property of wealthy men. It is unfortunate that in our modern world all men have not the same store of goods. It may be unfortunate that we must have with us the poor. But these are social faults which the lawmaker cannot cure. What then is the principal property of the poor man, whether he be a member of a labor organization or not? What other property has the poor man except his labor? What other property can he dispose of to provide himself and his family with food, clothing and shelter? To say to a laboring man that his ability to earn $3 or $4 or $5 a day with which to support his family is not property is to strip him at once of all the protection which our constitutional guarantees give him. In my own case, unfortunately the only property I possess is the little knowledge which I have acquired, and the ability to make that knowledge of service to my clients. Shall it be said that my ability to serve a client for compensation, indeed my very ability to stand before

Your Excellency today and present this case for the organizations which are so vitally interested, is not a property right? Shall it be said that inasmuch as this right is not property, that therefore I can have no protection from a court of equity, no protection granted me by the laws or the constitution of this land? Can it be economically true that the workman has no property in his labor? That the years of patient apprenticeship which he served before he acquired the standing of a journeyman shall be instantly taken from him by such a provision as this? It needs no citation to Adam Smith or John Stuart Mill to point out the very apparent sophistry of such a preposterous contention.

It is not necessary, however, to accept my statement of the economic principle involved. Fortunately, the highest courts of this land have finally fixed by their decisions the principle for which we contend that all labor is property and a property right coming within the meaning of our constitutional guarantees; that no power rests in any legislative organization under the guise of definition to take that property from a man without first compensating him for it.

Not so very many years ago, the Supreme Court of the United States, speaking through the very eloquent voice of Mr. Justice Harlan, in the famous case of Adair v. U. S., reported in 208 U. S. at page 161, used this language in speaking of labor and its qualities as a property right:

"Such liberty and right embraces the right to make contracts for the purchase of the labor of others and equally the right to make contracts for the sale of one's own labor; each right, however, being subject to the fundamental condition that no contract, whatever its subject matter, can be sustained which the law, upon reasonable grounds, forbids as inconsistent with the public interests or as hurtful to the public order or as detrimental to the common good."

And then again:

"It is sufficient in this case to say that as agent of the railroad company and as such responsible for the conduct of the business of one of its departments, it was the defendant Adair's right—and that right inhered in his personal liberty, and was also a right of property—to serve his employer as best he could, so long as he did nothing that was reasonably forbidden by law as injurious to the public interests."

The opinion then quotes from Cooley's famous work on Torts:

" 'It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts, and if he is wrongfully deprived of this right by others, he is entitled to redress.' "

"That the right to work is property cannot be regarded longer as an open question"

IT may be pertinent at this time to call attention to the fact that this opinion was written by a Justice of our Federal Supreme Bench whose friendly leaning towards labor no man can deny.

Indeed, my good opponent a short while ago pronounced a well deserved eulogy upon his talents and probity.

While on this subject, I want to read to you from a very recent decision of one of the most eminent State courts in this country, in a case in which no employer was directly or indirectly involved,—the case of *Bogni* v. *Perotti*, decided in Massachusetts last May. The report which I am about to read from may be found in Volume 224 of Massachusetts Reports, at page 152. This case, as I have said, had nothing to do with any dispute between union men and their employers. It was a quarrel between two different labor organizations as to which labor organization had the right to do a certain class of work. Disputes of this kind, I understand, are usually termed jurisdictional disputes among labor union men. In this jurisdictional dispute, one of the unions sought to restrain the other from interfering with its members in the doing of a particular class of work. The members of the defendant union invoked the provisions of a Massachusetts statute which is very similar to ours. I may say, parenthetically, that for the last year or two there has been an organized effort by the American Federation of Labor to have enacted into legislation in all the states an anti-injunction bill which is termed the "Model Anti-Injunction Bill." This so-called model anti-injunction bill was enacted in Massachusetts. The bill in full you will find in the footnote of the opinion from which I am reading. It starts, like our act, with the declaration that it shall not be unlawful for workingmen and women to organize, etc. The language, I

believe, is identical. Section 2 of the so-called model anti-injunction bill is also practically identical. Section 3 of the model law is also almost identical with Section 3 of the bill before you now. The Massachusetts law contained no provision for a trial by jury of contempt cases, but Section 4 of the Massachusetts law had the identical language which I have criticized, and which appears in Section 8 of the bill before you—"that the labor of a human being is not a commodity or article of commerce."

With this brief outline of the Massachusetts law, which I have made for the purpose of emphasizing the application of the decision to this bill, let me turn again to the Massachusetts court case. The defendant union claimed that the courts could not issue an injunction on account of this model anti-injunction bill. There were, therefore, two points for the Massachusetts Supreme Court to decide. First, was the provision declaring that the labor of a human being is not a commodity constitutional? Secondly, could courts of equity, notwithstanding the inhibition of the statute, grant writs of injunction in labor cases? Turning to the opinion, and omitting the introductory paragraph, which contains merely a recital of the facts which have already been set before you, I beg to read the following language of the Supreme Court of the State of Massachusetts.

> "That the right to work is property cannot be regarded longer an open question. It was held in *Cornellier* v. *Haverhill Shoe Manufacturers Association*, 221 Mass. 554, at page 560, that 'The right to labor and to its protection from unlawful interference is a constitutional as well as a common law right.' It was

said in *State* v. *Stewart*, 59 Vt. 273, 289, 'The labor and skill of the workman, be it of high or low degree, the plant of the manufacturer, the equipment of the farmer, the investments of commerce, are all in equal sense property.' In the Slaughter-House cases, 16 Wall. 36, 127, in the dissenting opinion of Mr. Justice Swayne, but respecting a subject as to which there was no controversy, occur these words: 'Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty.' It was settled that the right to labor and to make contracts to work is a property right by *Adair* v. *United States*, 208 U. S. 161, 173-175, and *Coppage* v. *Kansas*, 236 U. S. 1, 10. Controversy on that subject before this court must be regarded as put at rest by these decisions. The right to work therefore, is property. One cannot be deprived of it by simple mandate of the Legislature. It is protected by the Fourteenth Amendment to the Constitution of the United States and by numerous guarantees of our Constitution. It is as much property as the more obvious forms of goods and merchandise, stocks and bonds. That it may be also a part of the liberty of the citizen does not affect its character as property. It was said in *Coppage* v. *Kansas*, 236 U. S. 1, page 14, 'Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense.'

"Property cannot be confiscated"

"No discussion is required to show that it is beyond the power of the Legislature, under constitutions which guard the individual against being deprived of property without due process of law, to declare without any process at all that a well recognized kind of property shall no longer be property. 'Lawful property

cannot be confiscated' under the guise of a statute. *Durgin* v. *Minot*, 203 Mass. 26, 28. When legislative attempts to compel the deprivation of certain comparatively small sums of money without due process of law invariably fail (see for example, *Northern Pacific Railway* v. *North Dakota*, 236 U. S. 585; *Great Northern Railway* v. *Minnesota*, 238 U. S. 340; *Chicago, Milwaukee & St. Paul Railroad* v. *Wisconsin*, 238 U. S. 491; *Louisville & Nashville Railroad* v. *Central Stockyards Co.* 212 U. S. 132), it is manifest that something recognized as property by the law of the land cannot be extinguished utterly.

"A further effect of the present statute is to deprive the plaintiffs of the equal protection of the laws. The statute provides in substance that the property right to labor of any individual or number of individuals associated together shall not be recognized in equity as property when assailed by a labor combination, unless irreparable damage is about to be committed upon property or a property right as there defined and that no relief by injunction shall be granted save in like cases for which there is no relief at law. That a man cannot resort to equity respecting his property right to work in the ordinary case simply because he is a laboring man, and that he cannot have the benefit of an injunction when such remedies are open freely to owners of other kinds of property, needs scarcely more than a statement to demonstrate that such man is not guarded in his property rights under the law to the same extent as others.

"The courts must be open to all upon the same terms"

"If a laborer must stand helpless in a court while others there receive protection respecting the same general subject which is denied to him, it cannot be said with a due regard to the meaning of constitutional guarantees that he is afforded 'the equal protection of the laws' within the Fourteenth Amendment to the Constitution of the United States and similar provisions of our own Constitution. The right

to make contracts to earn money by labor is at least as essential to the laborer as is any property right to other members of society. If as much protection is not given by the laws to this property, which often may be the owner's only substantial asset, as is given other kinds of property, the laborer stands on a plane inferior to that of other property owners. Absolute equality before the law is a fundamental principle of our own Constitution. To the extent that the laborer is not given the same security to his property by the law that is granted to the landowner or capitalist, to that extent discrimination is exercised against him. It is an essential element of equal protection of the laws that each person shall possess the unhampered right to assert in the courts his rights, without discrimination, by the same processes against those who wrong him as are open to every other person. The courts must be open to all upon the same terms. No obstacles can be thrown in the way of some which are not interposed in the path of others. Recourse to the law by all alike without partiality or favor, for the vindication of rights and the redress of wrongs, is essential to equality before the law. The constitutional principles are discussed in *Opinions of the Justices*, 211 Mass. 618; 220 Mass. 627; 207 Mass. 601; 207 Mass. 606, 611; *Smith* v. *Texas*, 233 U. S. 630; *Atchison, Topeka & Santa Fe Railway* v. *Vosburg*, 238 U. S. 56; *Gulf California, Colorado & Santa Fe Railway* v. *Ellis*, 165 U. S. 150; *Chicago, Milwaukee & St. Paul Railway* v. *Polt*, 232 U. S. 165; *St. Louis, Iron Mountain & Southern Railway* v. *Wynne*, 224 U. S. 354.

"Doubtless the Legislature may make many classifications in laws which regulate conduct and to some extent restrict freedom. So long as these have some rational connection with what may be thought to be the public health, safety or morals, or in a restricted sense, 'so as not to include everything that might be enacted on grounds of mere expediency,' the public welfare, they offend no constitutional provision. *Commonwealth* v. *Strauss*, 191 Mass. 545, 550. Weekly payment laws, employers' liability acts, workmen's compensation acts, inspection laws based on the number of employees, and numerous statutes similar in principle have been upheld. See *Common-*

wealth v. *Libbey*, 216 Mass, 356; *Young* v. *Duncan*, 218 Mass. 346, 353; *Booth* v. *Indiana*, 237 U. S. 391, and *Tanner* v. *Little*, 240 U. S. 369, where many cases are collected. But all these and like statutes are quite different from one declaring that the laboring man either alone or in association with his fellows shall, as to his property right to work, be put on a footing of inferiority as compared with owners of other kinds of property when he appears in Court respecting that property right. It is primary and fundamental in any correct conception of justice that the laboring man stands on a level equal with all others before the courts. Whatever may be his social or economic condition outside, when he enters the court the law can permit no rule to fetter him in the prosecution of his claims or the preservation of his rights, which does not apply equally to all others respecting the same kinds of claims and rights."

"The objects of just criticism sitting upon the bench are few"

I PAUSE at this point in the decision, because only so much of it deals with the question we are discussing. Later on, however, when I come to argue that the legislature has no constitutional right to strip from courts of equity their inherent powers, I shall revert to it and read the remainder of the opinion. I have with me also the famous case of *Coppage* v. *Kansas* which has been cited in the Massachusetts case. My time being limited, however, I shall not at this time attempt to read from it; but I ask the Assistant Attorney General who sits by your side to make a note of this case so that when you consult him as to these constitutional questions he may have had the benefit of reading these decisions and thus verify the statements that I make concerning them.

While I am citing from the decisions of the Supreme Courts of various States of the United States itself, I desire to state that I was a little impatient at hearing from the lips of my antagonists such severe and unjust denunciation of our courts.

It is not impossible in any country to find now and then officials who do not measure up to the full requirements of their office. This is just as true of those discharging executive and legislative functions as of those discharging judicial functions. Indeed, I believe that on account of the high training our judges usually attain, the objects of just criticism sitting upon the bench are few. We cannot lose sight of the fact that all our affairs must be regulated by human instrumentalities, and wherever we find work for human kind to do we must content ourselves with the occasional short-comings due to purely human frailty and imperfection.

That reverence for our institutions which was implanted in me from very earliest days, I still retain, I am thankful to say. I still revere the founders of this nation, the great men whose courage gave it birth and whose constructive statesmanship gave it form.

We all hold in cherished memory the great grasp of government fundamentals in the minds of Alexander Hamilton, Thomas Jefferson, John Jay and John Marshall.

I cannot believe that what the revolutionary patriots wrested from an arrogant power and constructively formulated into organized society can be all bad. They believed that the wisest, safest and most beneficent form of government is the one containing within it three independent, though co-ordinating, departments—the legislative, executive and judicial. These men fashioned for the future. These men had visions of differences, disputes and clashes that might arise in the remote future when antagonistic interests, class selfishness or class passion might become an acute phase of the life of the nation. They therefore gave us our legislative department, which was made responsive to the immediate opinion of the people. They gave us an independent executive whose tenure was of different duration, and to him they entrusted the power of final approval or veto in legislative affairs. Then over and above all they created a court and immured it, if you will, in the seclusion almost of abstraction. To this court, far removed from political strife, they gave the final power of determining whether legislative enactments, often obtained as the result of heat, or passion, or fury, responded to the tests of the organic law of the land.

Unbridled and unjust attacks upon the judiciary resented

UNDER this form of government we have thrived and grown from a small group of colonies on the Atlantic shore to a big wide nation whose domain embraces the width of the continent itself. Under such institutions our people have

developed as rapidly as—if not more rapidly than—the peoples of other nations. We boast of a freer, healthier and more cheerful population in this country than is to be found anywhere else. *Can it be that suddenly, from the mouths of malcontents, has come a truth of which we never dreamed before?* Can it be that the prosperity and happiness of this nation has developed and spread not because of, but despite, its government institutions? I feel, sir, you join with me in the opinion that guided by the light of liberty and democracy which our liberal governmental forms have shed upon the individual we have made our step-by-step progress and shall continue to do so as long as the human being strives for self improvement. *With this feeling of true patriotism, with this reverence for the institutions under which we have been born and reared, I will not listen to this unbridled and unjust attack upon our judiciary without resenting it as best lies within my power.* Pardon me for this diversion from the subject matter before you, but I feel so keenly these sentiments that I could not without sacrifice of self respect refrain from giving them utterance at this time.

Turning again to the bill, I call your attention to Section 3. Many of the provisions of this section make no innovation in our existing laws. They are principles already sanctioned in the final decision of our courts. But deftly placed here and there are sentences and phrases that carry a portent of danger. Let me read this section.

> "No such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by

peaceful means so to do; or from attending at any place where such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize, or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto."

It provides generally that no restraining order shall prohibit any person from ceasing to perform any labor or from recommending, advising or persuading others by "peaceful" means so to do. I call your attention to the word "peaceful" and its discriminating use throughout the section.

The use of this word "peaceful" would make the statute in large part nullify certain provisions of ordinances enacted in the State. I refer to the anti-picketing ordinances of Los Angeles, San Francisco and Oakland. When I speak of their enactment, I do not allude to the ordinary enactment of legislation by the legislative bodies of these communities. I refer to the fact that in all of these cities these ordinances were enacted by the sovereign power of the people themselves exerted through that initiative for which you, sir, and I fought six or seven years ago.

Significance of Anti-Picketing Ordinances of San Francisco, Los Angeles and Oakland

IT is significant that in many of the communities of this State where organized labor is supposed to be all powerful politically as well as industrially, these anti-picketing ordinances have been adopted by the vote of the citizens—in Los Angeles in the first instance, then in San Francisco; and finally in Oakland. Let me turn here to these men who represent labor, and who have represented it well, and remind them of the fact that their boast is that San Francisco is a labor union city; that San Francisco is controlled politically, as well as economically, by the power of organized labor. Let me remind them that in San Francisco where labor is claimed to be all powerful, the people by a very decisive vote only last year adopted an anti-picketing ordinance prohibiting picketing in labor strikes in that city. So likewise did Oakland, supposed to be another stronghold of organized labor. The people themselves through the exercise of their initiative power have placed upon the books these local laws.

We have boasted in California these last few years that as a result of a political revolution the people have again taken unto themselves full sovereignty. We boast that today we, the sovereign people, enact or reject legislation as suits our sovereign whim, caprice or judgment. We boast of the fact that the only response which our chosen officials now heed is the will of the people lawfully expressed. You and I, sir, were participants in that campaign that resulted in the first

enactment into the laws of California of the principle of the initiative and referendum. We have now in most of our municipalities the same initiative and referendum provisions. This is because we believe democracy is to be trusted. We fought for this direct allotment of legislative power.

To return to my subject, in all the cities to which I have referred the people themselves, in that seclusion and secrecy of the ballot which is the American citizen's most cherished privilege, have expressed their denunciation of the methods and principles of what is termed the "picket."

With this in mind, let me call your attention to the fact that in these anti-picketing ordinances it is provided that it shall be unlawful for any person on any public street, among other things to speak in a loud or unusual tone or to cry out or proclaim for the purpose of inducing or influencing or attempting to induce or influence any person from doing certain things, or attempting to intimidate, threaten or force people to do certain things which they do not want to do. These things are declared to be unlawful. Many of our crimes, in fact most of our crimes, are not crimes of violence, but crimes of wrong without violence. Fifty men armed with axes or pick handles may walk up and down in front of a man's twenty-five foot store front and never utter a word or make a sign, yet no intelligent, fair man will contend that such conduct is not wrongful, and if such conduct is made criminal, can any man contend that the criminal element does not justly exist? A man need not shoot me to take from me my purse; he need but draw a revolver and point it in my direction. In a physical sense, no violence will have

been committed, but in every sense save a physical sense my purse will have been yielded under the duress of that pointed revolver. So, too, if I approach a man's store and see in front of it twenty big, powerful men parading up and down with banners, it would tax a child's credulity to believe that there was no coercion, intimidation or threat intended in such a maneuver.

These things are claimed by the representatives of organized labor to be peaceful things: and if so, under the bill which is before you for consideration, so long as they remain peaceful no court of equity shall issue an injunction to prevent them. Under the ordinances which have been adopted by the people themselves, however, such conduct is made criminal. Can anyone honestly contend that such conduct is not criminal and should not be deemed so by the criminal laws of the State? Yet notwithstanding this, inasmuch as the Flaherty anti-injunction bill No. 1035 forbids injunctions being issued to restrain peaceful threats, if such there can be, if this bill becomes a law and is constitutional, no court in the state would be permitted to issue injunctions restraining fifty men with loaded revolvers or with pick handles from marching up and down in front of a man's place of business. To argue that such should be the law is to argue that chaos is the right form of government. Anarchy and syndicalism have not yet become enshrined in the hearts of our American citizens nor become a part of their conception of free institutions. So I submit that this provision has been deftly inserted in this statute for the purpose of evading the further application of the local anti-picketing ordinances; and I submit fur-

ther that to tolerate such acts as I have described to you, to sanction them, to throw about them the protection of the law, would be unjust, would be vicious and would be destructive of the very safety of our society.

"To pyramid trial upon trial would be to initiate anarchy into our social system"

PASSING this point, I come to the section that I believe is the most vicious in this Act. I go further—I believe it contains more evil than any bit of legislation that will pass across your desk from this session of the legislature. Let me read it to you:

> "That any person who shall wilfully disobey any lawful writ, process, order, citation, decree or command of any court of the State of California, by doing any act or thing therein or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense, shall be proceeded against for his said contempt as hereinafter provided."

A very superficial thought concerning this section would not disclose the ramifications to which its evils extend. Our first instinct is heartfelt approval of the principle of jury trial. We revert again to the English Bill of Rights and the Habeas Corpus act, to the American Declaration of Independence and our Constitution. Dear to the heart of every one of us is the belief that no man shall be tried or condemned except upon the judgment of his peers.

The right is granted every man to a trial. When that trial has been accorded him and the controversy determined, then the punitive or remedial arm of the law should be stretched out without further halt. Orderly government requires an efficient disposition of all litigable questions, whether penal or civil. Orderly government requires that the condemned criminal shall be speedily punished, and that in civil cases the litigant shall have promptly his full judgement and relief and the controversy be finally terminated. To pyramid trial upon trial would be to initiate anarchy into our social system and bring about a silent political revolution. The principle of a jury trial in contempt cases had its birth in a political campaign. You will recall that the distinguished son of Nebraska, Mr. W. J. Bryan, first became a candidate for President in 1896. He made his campaign upon three destructive principles which he submitted to the American constituency—first, free silver; second, populism in general, and third, that other "ism" of his, a denunciation of government by injunction. I am almost bold enough to state that you, sir, rejoice with me in the fact that the eloquent Nebraskan was not successful in his candidacy. Free silver has gone into the discard, where it properly belongs. Populism had its mushroom growth, but, fortunately, also its mushroom death. A denunciation of government by injunction was thrown from every political platform in the United States in the campaigns of 1896, 1900 and 1904. Since the American commonwealth has silenced the candidate Bryan, a few feeble mutterings of his have been taken up by people who are seeking to promulgate his fads and fancies in legislation.

This bill is one such effort. Before I point out the direct effect of this principle upon our jurisprudence, I want to invite your attention again to certain fundamentals upon which our government is based, and ask your further attention to certain decisions on this class of legislation.

The Anti-Injunction bill would trench upon the judicial power of the Courts

THE Governor's powers are derived from the Constitution, and from no other source. The legislature of this State derives its powers from our Constitution, and from no other source. The judiciary finds its powers laid down in the Constitution and nowhere else. You cannot, if you would, trench one tittle upon the powers of the legislature nor upon those of the judiciary. In turn, the legislature cannot interfere with the least of your powers nor those of our courts. Finally, the courts are limited in their powers by the Constitution. The courts of our State are given certain powers by our Constitution. In Section 5 of Article VI of our Constitution we find it very clearly stated: "The superior court shall have original jurisdiction in all cases in equity," etc. In Section 1 of the same article we find "the judicial power of the State shall be vested in the Senate sitting as a court of impeachment, in a Supreme Court, District Courts of Appeal, Superior Courts, and such inferior courts as the legislature may establish," etc. In other words, the entire power of judging is vested in the courts. This power cannot be taken away by a co-ordinate

department, the legislature. Neither can it be abridged or qualified. Needless to say, the bill before you is an act of the legislature. Your approval would make it a law. If that law trenches upon the judicial power of the courts as it is given to them by the Constitution, the law is a nullity. To illustrate: Your Excellency is given the full right to pardon. This right you derive from the Constitution itself. This right cannot be taken from you or abridged by the legislature or by the courts. Would you approve of a bill which should provide that you should not grant pardons to certain kinds of offenders? If a bill were presented to you which provided that any man who is convicted of an act of violence upon a labor union member could not be pardoned by the Governor, would you consider that bill constitutional? No, and properly not. It would not be constitutional and the legislature would have no power to pass such a law for the very reason that your powers of pardon come direct from the source,—the Constitution,—just as the powers of the courts come from the same source.

I am fortified in my position by the decisions of courts of last resort from all over the land, including the Supreme Court of the United States. I have explained how this theory of trial by jury in contempt cases found its birth in the political travail of W. J. Bryan. While Mr. Bryan was unsuccessful, still a part of his propaganda permeated some of the rock-ribbed democratic states of the country. These states harkened in some instances to his siren voice, and enacted legislation which provided jury trials in contempt cases Singularly enough in all of these democratic

States, as rapidly as such legislation was enacted, just as rapidly was it declared unconstitutional.

The first case I want to read from is *Carter* v. *Virginia*, reported in 96 Virginia Reports at page 791. In that State, the legislature provided for jury trial in contempt cases. The court promptly determined that the province of courts of chancery could not thus be invaded by the legislature. In the course of the opinion the court said:

> "Our conception of courts, and of their powers and functions, comes to us through that great system of English jurisprudence known as the common law, which we have adopted and incorporated into the body of our laws.
>
> "That the English courts have exercised the power in question from the remotest period does not admit of doubt. Said Chief Justice Wilmot; 'The power which the courts in Westminster Hall have of vindicating their own authority is coeval with their first foundation and institution; it is a necessary incident to every court of justice, whether of record or not, to fine and imprison for a contempt acted in the face of the court; and the issuing of attachments by the Supreme Court of Justice in Westminster Hall for contempts out of court, stands on the same immemorial usage which supports the whole fabric of the common law; it is as much the lex terrae, and within the exception of Magna Charta, as the issuing of any other legal process whatsoever. I have examined very carefully to see if I could find out any vestiges of its introduction, but can find none. It is as ancient as any other part of the common law.'"

The opinion then quotes from a famous Federal case, *U. S.* v. *Hudson*, 7 Cranch, 32, the following statement:

" 'Certain implied powers must necessarily result to our courts of justice from the nature of their institution. But jurisdiction of crimes against the State is not among those powers. To fine for contempt, imprison for contumacy, enforce the observance of order, etc., are powers which cannot be dispensed with in a court, because they are necessary to the exercise of all others; and so far our courts, no doubt, possess powers not immediately derived from statute.' "

The Court then speaks of the defendant claiming the right of trial by jury, and that this right of trial is not an interference with the power of the court. To this the Court replied:

"To this view we cannot assent. It is not a question of the degree or extent of the punishment inflicted. It may be that juries would punish a given offense with more severity than the court; but yet the jury is a tribunal separate and distinct from the court. The power to punish for contempts is inherent in the courts, and is conferred upon them by the constitution by the very act of their creation. It is a trust confided and a duty imposed upon us by the sovereign people which we cannot surrender or suffer to be impaired without being recreant to our duty."

Further along in the opinion the Court used this language:

"Thus we see that offences of a nature personal to the court are to be punished by the court, while those which interest suitors are punishable only by a jury. So that suitors having obtained a judgment or decree, after long and expensive litigation find the court, powerless to secure to them its fruition and enjoyment and, unless their antagonist chance to be a law abiding citizen, discover that their success has only begotten another controversy. Ours is a law abiding community, and good citizens will, without compulsion, respect the lawful orders of their courts; but in every society there are those who obey the laws only because there is behind them a force they dare not resist. Is

it wise or beneficent legislation which accepts the obedience of the good citizen, but is powerless to enforce the law against the recalcitrant? Under this law the authority of the courts would be reduced to a mere 'power of contention.' "

I commend you to a careful reading of this opinion, from which in my limited time, I have been confined to these few brief excerpts. The opinion contains an exhaustive analysis of the philosophy as well as the history of chancery powers.

Oklahoma declared unconstitutional law requiring contempt cases to be tried by jury

IT is with much pleasure that I read from an Oklahoma decision. I speak of this pleasure because you must recall that Oklahoma was considered the most radical and most socialistic State. Indeed, as a condition to its admission into the Union, Oklahoma was compelled to amend its first proposed constitution. Oklahoma is commonly called the home of populism, of the bank guarantees, of poverty guarantees, and of all the panaceas for all the ills that ever afflicted a social or political community. Naturally, Oklahoma was exquisitely sensitive to the creed of Bryan, and passed such a law as he advocated requiring contempt cases to be tried by jury. The statute was tested in the Supreme Court in the case of Smith v. Speed reported in Volume 55, Lawyers' Reports Annotated, at page 402, and the Court, in declaring the statute unconstitutional, said:

"If the contention now sought for by the plaintiff in error could be sustained, it would go to the extent that the court, in equitable proceedings, after a full hearing and a final determination and judgment upon the merits, is without the power to enforce its judgment by the imposition of a pecuniary penalty or imprisonment, and that, in the endeavor to enforce its judgment by proceedings in contempt, it would be subject to have its final judgment brought into review in the contempt proceedings upon a change of judge or of venue, to a completely new jurisdiction, and to a trial by jury, in which the merits of the final order which has been made by the court in the proceedings should again be reviewed, including the question whether there was any merit or right or authority of the court in the equitable proceeding in which the judgment had been rendered or the order made; and the equitable jurisdiction of the district court upon matters finally determined would thus be subject to be again brought in question by another judge in another venue, and by a jury—a thing unheard of in the chancery jurisdiction. If such a state of things could be, it could but result in the degradation of courts, and to make them truly the subjects of contempt. If, in the progress of steps tending to demolish the equitable jurisdiction of the district courts and judges, the point should now in this case be reached, and it now be held, that neither the courts nor the judges have authority or jurisdiction to enforce the orders which it is their duty to make, but that the proceedings in contempt requisite to enforce such orders are to be subjected to trial by jury, removed to another county, and tried before another judge, there is no reason why an act of the legislature may not also be passed, and held to be just as effective, which would undertake to submit the contempt proceedings to the jurisdiction of a justice of the peace, either in the county where the violation of the court's order occurred, or in some other county; and in that event the immense and beneficent jurisdiction in chancery, the result of the labors of Nottingham, Hardwicke, Thurlow, and Eldon, and others of the great English Chancellors who have so largely enunciated this jurisdiction, and of the equally eminent judges of our own Supreme Court, from Chief Justice

Marshall to our own day; who have joined in its confirmation, would be subjected to the supremacy of justices of the peace, with their juries.

"No reputable lawyer would consent to occupy the bench in such a condition of things, and this court would, if it could abide such a contention and prospect, be instrumental in destroying the chancery jurisdiction which they were appointed to uphold. But such is not the law. The equitable jurisdiction of the courts and judges is not, perhaps, as generally apprehended at large, but is well understood by the enlightened knowledge of the bar, and is capable of as succinct and definite ascertainment as is the right of trial by jury at the common law."

Later in the same opinion, the Court uses this significant language:

"It can not be conceded that the right to punish a contempt may be turned over by the legislature to a separate tribunal. It was said by the Supreme Court of the United States in *Eilenbecker* v. *Plymouth County Dist. Ct.* 134 U. S. 36, 33 L. Ed. 803, 10 Sup. Ct. Rep. 426, that 'if it has ever been understood that proceedings according to the common law for contempt of court have been subject to the right of trial by jury, we have been unable to find any instance of it.' And in *Interstate Commerce Commission* v. *Brimson,* 154 U. S. 447, 448, 38 L. Ed., 1047, 14 Sup Ct. Rep. 1125, it was again said that 'surely it can not be supposed that the question of contempt of the authority of a court of the United States, committed by a disobedience of its orders, is triable, of right, by a jury.'" (55 L. R. A. 406, 407).

It should be borne in mind, that populism, fadism, and all the "isms" known to political crusaders started from Oklahoma and ran their furious course over the Middle West as did the prairie fires of a generation ago.

Let us step a bit further south of the Mason and Dixon line, into North Carolina. The legislature had limited the authority of courts in contempt cases. The Supreme Court of that State in the matter of McCown, reported in volume 139 of the North Carolina Reports, at page 95, in a very exhaustive review of the powers of courts as distinguished from the other departments of government said:

"The constitution provides for a distinct separation of the three co-ordinate branches of the government and vests the judicial power in the several courts mentioned in Article IV, Section 2. It further provides that the general Assembly shall not deprive the judicial department of any power of jurisdiction which rightfully pertains to it. Article IV, Section 12. If the power to attach for a direct contempt is inherent in the courts and necessary to their vitality and usefulness, any interference with its exercise which prevents the courts from proceeding against contumacious or disorderly persons must needs be a deprivation of the power. But argument is not required to establish so plain a proposition. Rapalje, at page 13, Section 11, says: 'In the absence of a constitutional provision on the subject, the better opinion seems to be that legislative bodies have not power to limit or regulate the inherent power of courts to punish for contempt. This power being necessary to the very existence of the court, as such, the Legislature has no right to take it away or hamper its free exercise. This is undoubtedly true in the case of a court created by the Constitution. Such a court can go beyond the provisions of the statute, in order to preserve and enforce its constitutional powers, by treating as contempts acts which may clearly invade them.'"

Georgia likewise declined to limit power of judiciary to punish for contempt

PROCEEDING further south, to the State of Georgia, where the legislature had likewise attempted to limit the powers of the judiciary to punish for contempt, the Supreme Court, in the case of *Bradley* v. *Georgia*, reported in 111 Georgia, at page 168, used the following language:

"The power to punish for contempt is inherent in every court of justice. It is absolutely necessary that a court should possess this power in order that it may carry on the administration of justice and preserve order and decorum in the court. As far as we can ascertain, this power has existed since courts were first established. Judge Wilmot, in 1795, in a treatise upon the subject, said he had been unable to find where it was first exercised, but in his opinion it was as old as the courts themselves. All the courts, in their decisions, and all the text writers lay down the same doctrine—that this power is necessary to all courts, and is inherent in them. It is so well established that we deem it unnecessary to cite authorities upon the subject. This power being inherent and necessary, can the legislature by defining what are contempts, limit the courts to treating as contempts such acts only as are embraced in the legislative definition? In the formation of our Government, Federal and State, the three departments of government were in each constitution ordained to be separate, distinct and independent of each other. No one of them had any right or power to infringe upon the power or jurisdiction of the other, without an express constitutional provision granting this right or power. The legislature cannot take away, restrict, or modify any of the powers conferred by the constitution upon the executive. Nor can the executive infringe upon the powers of the legislature. Nor can either the legislative or executive abridge the powers conferred by the constitution upon the courts, unless express authority is given. Each of these departments represents the sovereignty of the people. Indeed, the executive, the

legislature and the judiciary are but the servants and agents of the people. To each department the people have given certain powers, and have declared that neither of the other departments shall interfere therewith. The people have entrusted these servants or agents with the duty of carrying out their will, and for that purpose, in one of these departments, they have by their organic law established certain courts. Among these are the superior courts. When these courts were established by the constitution, they were established with all the rights and powers possessed by all courts of record prior to that time. Among these powers were that of defining and punishing contempts of court, whether such contempts were direct, that is, committed in the presence of the court, or constructive, interfering indirectly with the administration of justice. This power was incident to the court itself, and belonged, not to the judges as individuals, but to the court. The courts established by the constitution were established by the people, and represented the majesty of the people. Whoever disobeyed an order of such a court, or was in contempt of its proceedings, or did anything which tended to impede or corrupt the administration of justice committed a contempt against the majesty of the people. Without power and ability to preserve order and decorum, to preserve the purity of jury trial and to enforce their own orders, and the like, courts could not carry out the wishes of the people. The courts established by the constitution were therefore vested with all these necessary powers—powers which were, at common law, possessed by the courts of record. Whatever a court of record could, under the common law, punish as a contempt, these courts had power to deal with as a contempt. This power came to them as much as did the common law. Indeed, it is a part of the common law.—1 Bailey on Jur., No. 297. When the constitutional convention established our courts, it vested in them all the power necessary to carry out the purposes for which they were designed. Such a court, established with such powers, is not in the exercise of these powers subject to legislative control. The superior court is a constitutional court, established with these powers, and the legislature has no right, without express constitutional authority, to

abridge, restrict, or modify either its jurisdiction or its powers."—(50 L. R. A. 692).

The decision in the Debs case

IT will not be seriously denied that Mr. Bryan's appeal of 1896 was fed largely upon the industrial discontent that came after the great railroad strikes of the early 90's. The famous case of Debs had created discussion all over the union. It will likewise be recalled that Debs, in attacking the jurisdiction of the Federal judiciary, had brought up the very point in question here. The United States Supreme Court, however, in the Debs case reported in volume 158, of the United States Supreme Court Reports, at page 564, answered this contention as follows:

> "But the power of a court to make an order carries with it the equal power to punish for a disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the court—and this is no technical rule. In order that a court may compel obedience to its orders it must have the right to inquire whether there has been any disobedience thereof. To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency."

Since then, in defining what is meant by the judicial power of the United States, the same court in the case of *Kansas* v. *Colorado*, 206 U. S. 46, made this declaration:

> "Speaking generally, it may be observed that the judicial power of a nation extends to all controversies justiciable in their nature, the parties to which or the property involved in which may be reached by judicial

process, and when the judicial power of the United States was vested in the Supreme and other courts, all the judicial power which the nation was capable of exercising was vested in those tribunals, and unless there be some limitations expressed in the Constitution it must be held to embrace all controversies of a justiciable nature arising within the territorial limits of the Nation, no matter who may be the parties thereto. This general truth is not inconsistent with the decisions that no suit or action can be maintained against the Nation in any of its courts without its consent, for they only recognize the obvious truth that a Nation is not without its consent subject to the controlling action of any of its instrumentalities or agencies. The creature cannot rule the creator."

Again, and most recently, in the memorable case of *Gompers* vs. *Buck Stove & Range Co.*, reported in volume 221 of the Reports of the Supreme Court of the United States, at page 418, that august tribunal said:

"If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery.

"This power 'has been uniformly held to be necessary to the protection of the court from insults and oppressions while in the ordinary exercise of its duties, and to enable it to enforce its judgments and orders necessary to the due administration of law and the protection of the rights of suitors.' (*Vessette* v. *Conkey*, 194 U. S. 324, 333.)

"There has been general recognition of the fact that the courts are clothed with this power and must be authorized to exercise it without referring the issues of fact or law to another tribunal or to a jury in the same tribunal. For if there was no such authority in the first instance there would be no power to enforce

its orders if they were disregarded in such independent investigation. Without authority to act promptly and independently the courts could not administer public justice or enforce the rights of private litigants."

Let me revert now to the Massachusetts case from which I read in the early part of my argument:

"It has been argued that since the equitable jurisdiction of the court is largely statutory, *Parker* v. *Simpson*, 180 Mass. 334, 350, it may be curtailed by the legislature in respect of the power to grant injunctions. It is one thing to affect the scope of equity by extending or restricting the branches of that jurisprudence which courts may administer; it is a quite different matter to enact that some citizens may resort to it, while others may not.

"Without discussing other aspects of this proposition, it is enough to say that the power of courts to afford injunctive relief cannot be impaired by the legislature in such a way as to prevent its use in favor of one property owner, when it is preserved for the benefit of other property owners. It is an elementary principle of equity that an injunction never is issued except to prevent irreparable injury. If the statute means anything more than this, there would be other difficulties about its construction which need not now be elaborated."

I could weary you with a repetition of authorities from the highest courts in all the states of this land in support of the proposition that I urge; but with the decisions already quoted of some of the most respected of our State courts, fortified as they are by the decisions of the highest court of our Federal government, I feel it unnecessary to go further.

The Clayton Act not to be compared with this bill

PASSING the question of the constitutionality of this statute, which I assume you will take up in serious conference with the Assistant Attorney General, I want a moment of your time in presenting my views of its practical operation. You have been told that the enactment of the Flaherty bill now before you would give the State of California in effect the provisions of the Clayton anti-injunction act. Superficially this is true, but substantially it is untrue, and, I must now believe, knowingly false. In California we have a large body of substantive law, which is to be found in several thousand different sections of our Civil Code, as well as in an almost equal number of sections of our Criminal Code and in many statutes in addition. The Federal government has no such body of substantive laws. Its powers, being delegated powers, are, therefore, limited powers. The Federal law has little to do with aught but interstate commerce, foreign commerce, patents, copyrights and the like. Therefore, when the Clayton act provides that all contempts which are of themselves criminal offenses shall be triable by a jury it has a very limited application. I have in my hand here a list of eighty odd sections of our California Criminal Code alone which make certain acts criminal offenses, acts which of themselves involve no moral turpitude nor any immoral conduct, but acts which have been declared to be criminal merely to safeguard and protect public and property rights. It is unlawful, for instance, for the directors of a corporation to declare dividends from aught save surplus profits

of the corporation, and when the directors of a corporation do so they are guilty of a misdemeanor.

All misdemeanors are criminal offenses. Therefore if a court of our State should issue its injunction restraining the directors of a corporation from illegally declaring and paying out dividends, and the directors of a corporation should wantonly defy the order of the court, the court would be without power to punish the directors. These directors would have the right to a trial by jury, because what they did was a criminal offense. It is likewise a misdemeanor and therefore a criminal offense to divert water from a ditch, flume or aqueduct that does not belong to the party causing the diversion. It is a misdemeanor to pollute streams, or pollute air. It is a misdemeanor to trespass upon lands belonging to another. It is a misdemeanor to conduct a bawdy house or house of prostitution, and so on. As I said at the outset, I have here for your use a list of at least eighty such offenses, none having anything to do with the differences occurring between capital and labor. Let us take any one of these cases and see what the effect of this statute would be if it should become a law. San Francisco today is doing what Los Angeles did five or six years ago in the Owens River—acquiring certain rights to water in the Tuolumne River. Some of those rights have been acquired after litigation. In those suits in which the City has prevailed, the City has been adjudged to be the owner of certain waters and the judgment has contained within its terms an injunction restraining the farmers along the Tuolumne river from diverting or taking this water.

That judgment is now pending on appeal in our Supreme Court. Let us assume that the Supreme Court affirms that judgment. Let us assume that thereafter the farmers along the Tuolumne river, despite the injunction, continue to divert the waters which have been determined to be the property of the City of San Francisco. Under this Act would the Supreme Court have power summarily to punish the offenders and enforce respect for its decree? Not at all. Under the provisions of this bill, the offender would have to be cited; he would be entitled to a jury trial according to the practices and forms prevailing in ordinary misdemeanors. This man then would be tried in his own township among his own farmer neighbors, all of whom are directly interested in taking the water which has been determined to be the property of the people of San Francisco. In such a trial before a jury of twelve men the law would require a unanimous verdict. If, therefore, but one man upon that local jury of twelve men along the Tuolumne river should vote not guilty, whether that man be interested or disinterested, whether he be the leader of the community or a humble workman in a little town, it would lie within his power to nullify the solemn adjudication of the highest court of our State, and thereby make property determinations valueless.

Under this bill the courts could not enforce their own mandates

TAKE another case: The smelters in Kennet have been restrained by final injunction from using their smelters because of the destruction wrought to vegetation and forests for 40, 50 and 60 miles south—into Shasta County. Suppose this law goes into effect, and suppose the manager of the smelters orders the fires started, and the fumes again burst from the chimney, spreading their poisonous deposits upon the orchards and farm lands to the south. Such an act would be in flagrant disobedience of the existing judgment in the litigation that has been finally determined. Would the Court have power to compel him to stop? Would the Court have power to punish him? Would the Court have power to uphold its own dignity and insist upon respect for its own mandates? Not at all. This man, guilty of deliberate disobedience of the final order of the Court, under the provisions of this bill would have the right to a trial by jury, and in the township of Kennet. Kennet, as we all know, is a little town dependent entirely upon the operation and the prosperity of the smelters. Is it reasonable to believe that a jury of twelve men living in Kennet, depending for their livelihood upon the prosperity of the smelters of Kennet would hold the defendant guilty on such a trial? Credulity hardly warrants the belief.

The Anti-Injunction bill would revolutionize our judicial procedure

TAKE still another case: the people of this State recently passed a Redlight Abatement bill. Under the terms of this statute, when a court finds and determines that property is used for purposes of prostitution, a judgment is issued determining that this property shall be condemned, and enjoining the use of it for a fixed period of time. What becomes of the Redlight Abatement law? If the Court issues its injunction under the provisions of that law, it cannot enforce it. In San Francisco, I understand, the experience of our police courts is that they cannot secure convictions of women guilty of prostitution, even where their guilt is practically confessed. If the present measure becomes a law, you might just as well wipe from the statute book the Redlight Abatement law.

Nor must I forget to call your attention to the fact that in California all contempts are themselves made misdemeanors, and therefore criminal offenses. Section 166 of our Penal Code expressly says that every person guilty of any contempt of court of the kinds enumerated in the section is guilty of a misdemeanor. Then the section continues with a definition that embraces almost every known form of contempt. It has been very seriously urged that inasmuch as all these contempts are themselves misdemeanors, therefore, under the language of the statute before you, all contempt cases would have to be tried by a jury. My own opinion is that the bill would probably receive such a construction. If so, the bill will accomplish a revolution in our judicial procedure.

I could go on right down the list of which I have spoken and which I hold in my hand; trespass cases; suits to quiet title. I could give innumerable cases and consume the rest of the day. I have given these few illustrations merely to bring to your mind the force of the practical objections. Of what value will courts be? What will become of law and order and the regulations of organized society? What of the dignity and effectiveness of constituted authority, if finality is stricken from our judicial calendar, if it be given to a single individual, ignorant or educated, honest or dishonest, to override and nullify the final determination of the highest courts in the state, reached after painstaking investigation and hearing. Law and order will be converted into a hollow mockery, and chaos would reign in this State heretofore governed by rational law.

I have taken this much of your time with an analysis of the act itself. Let me turn now to another matter that should not be overlooked. It is axiomatic that the fewer laws there are, the better it is for organized society and for the individual. This is a political truism that we have inherited from Jefferson himself. Of course, every wrong should have a remedy, every right should be protected, and legislation should be enacted where it is required to safeguard property, life or the enjoyment of life and property. Where none of these needs exist, legislation is vicious, because all needless legislation carries its inherent vices with it.

It has been urged that organized labor has been the victim of many abuses and that it has been cruelly wronged by the courts of our State. I challenge contradiction of the statement which I now most earnestly and advisedly make: that in no state in this union have the legal rights of labor been more fully protected than in California; and that in no state in the Union has labor less cause for complaint in this respect than in California.

It has been intimated that this bill is confined in its operation to labor union disputes, and has not the wide scope its language imports. Let me assume for the moment what these gentlemen claim is true. Then, being bound by the ruling of the highest court of this State, you cannot turn a deaf ear to a decision handed down by our Supreme Court not so many years ago—the case of *Pierce* v. *Stablemens' Union*, reported in volume 156 of California Reports at page 70. The Union there claimed that under the provisions of the statute of 1903, which forbade the issuance of injunctions in labor disputes, the court had no power to restrain the members of the Stablemens' Union from applying opprobrious epithets and threatening to beat up and otherwise injure men who would not obey them. In dismissing this point, our Supreme Court held that such legislation was trespassing upon the exclusive province of the judiciary. In the course of its opinion, the court used the following language:

"As to the first of these contentions, this court had occasion in *Goldberg, etc. Co.* v. *Stablemen's Union*, 149 Cal. 429 (117 Am. St. Rep. 145, 86 Pac. 806), to consider the statute above referred to and relied upon by appellants, and declared that if the construction there contended for (and here contended for) was the proper construction, this provision of the act was void. Not only would it be void as violative of one's constitutional right to acquire, possess, enjoy, and protect property but as well would it be obnoxious to the constitution in creating arbitrarily and without reason a class above and beyond a law which is applicable to all other individuals and classes. It would legalize a combination in restraint of trade or commerce, entered into by a trades union, which would be illegal if entered into by any other persons or associations. It would exempt trade unions from the operation of the general laws of the land, under circumstances where the same laws would operate against all other individuals, combinations, or associations. It is thus not only special legislation, obnoxious to the constitution (Art. IV, Sec. 25, subds. 3, 33), but it still further violates the constitution in attempting to grant privileges and immunities to certain citizens or classes of citizens which, upon the same terms, have not been granted to all citizens." (Art. 1, Sec. 21.)

This decision cannot be ignored. If the claim made at this eleventh hour by the proponents of this bill that it is limited to labor controversies be correct, then the bill is unconstitutional for the reasons indicated by Justice Henshaw. If it is not limited in its effect to labor unions, the bill is open to all the objections I have hitherto urged in my argument.

The bill a product of "those newly distilled liquors of syndicalism and anarchy"

DURING the last three or four months I have carefully weighed and re-weighed this bill to find some point of merit that might justify its introduction and its final passage, without meeting with any success whatever. The more I read it the more indignant I became that such legislation should be offered in this day and generation. Whether it was run through in the rush of the closing days of a busy legislative session or whether it was cooly and designedly introduced for the purpose of wilfully bringing about the deplorable conditions which I have indicated would ensue, I have no means of knowing. But having carefully called to the attention of the legislative Committees the very plain imperfections of the bill as well as the strong judicial decisions of these many courts, with my reverence for the existing institutions of my country and having seen the most unequivocal court decisions utterly disregarded, I cannot help but believe that in passing this bill our legislature has truculently offered an insult to our judiciary, has needlessly cast an aspersion upon the courts of this State, and has unjustifiably condemned an attitude towards labor which our courts have never entertained. If any criticism is merited upon this subject, it might possibly be that our courts have stepped ahead of all other courts in sanctioning practices which everywhere else but in California are deemed oppressive, cruel and illegal.

I realize that I am somewhat overstepping my time. My justification for imposing thus upon your patience is the gravity of this question to the entire business community and to the State itself, which will be confronted by anarchy at a time when all its strength and all its resources should be conserved for the great struggle which this nation is now entering upon. As well do I feel the bill destructive of the very principles of government under which this nation has thus far prospered. I cannot speak too strongly upon this subject, for what endangers the fundamentals of our government, must arouse in us a desire to fly to its protection.

I cannot say that I have as yet yielded to the intoxication of those newly distilled liquors of syndicalism and anarchy which now and then are quaffed and spilt about our country. Some men, mentally frenzied by the belief that life has not yielded to them all of material return which they feel they deserve, have sought an outlet for their resentment in attempting to shatter the entire structure of our social system. Others, perhaps with less pardonable motives, are exploiting men who all too little realize how far at times they are being led. To one and all I say the time has come for the sober, intelligent and patriotic people of this State to call a halt. We appeal to you, sir, the chief executive of our State, to stay the threatening hand ere it wreak its full destruction.

Conclusion

LET me again repeat: We have naught but sympathy with all the legitimate aspirations of labor. We have none but kindly sentiments for a union striving for a better material as well as spiritual plane. To everything that may be conducive to a better scale of living, to a happier and more contented people, we are willing to devote ourselves and all which we possess, but inflexibly do we interpose the barriers of our solemn objection to anything that spells destruction or ruin. With all the earnestness I can find in me, sir, I beg you most seriously to weigh these objections which I have been compelled in hurried fashion to offer before you, to weigh them, with a mind ever open to the remotest as well as the immediate consequences of such legislation to yourself, to ourselves and the people of the State as a whole.

I have spoken to you as a lawyer representing some of the largest commercial interests in this big State of ours, but I appeal to you over and above all, as a citizen having a true love and a sincere feeling of patriotism for this State in which I was born and in which I hope to leave my ashes.